

**Section 1. Title 40, Arizona Revised Statutes, is amended by adding chapter 8, to read:**

**CHAPTER 8**

**DIGITAL ARIZONA INFRASTRUCTURE OFFICE**

**ARTICLE 1. GENERAL PROVISIONS**

**REV. 12b**

**40-1401. Definitions**

In this chapter, unless the context otherwise requires:

1. "Office" means the Digital Arizona Infrastructure Office established by this chapter.
2. "Board" means the board of directors of the Office.
3. "Broadband Infrastructure" means facilities and equipment, including cable, fiber, conduit, ducts, poles, towers, cabinets, vaults, manholes, handholes and other associated equipment and appurtenances and related rights-of-way that are used directly or indirectly in providing broadband services, telecommunications, telecommunications services or other wire and wireless communications.
4. "Broadband Infrastructure Project" means constructing, acquiring, providing, developing, operating, maintaining, leasing or improving broadband infrastructure, broadband service or technologies that constitute a part of, or are related to, broadband infrastructure or broadband service, to provide for broadband service in unserved, underserved, and rural areas of this state.
5. "Broadband Provider" ("Provider") means any entity that provides for sale or resale of wholesale or retail broadband services in the State of Arizona and is recognized as an Eligible Telecommunications Carrier, as a qualified broadband provider by the Arizona Corporation Commission, or meets Federal Communications Commission and industry carrier class service guidelines.
6. "Broadband Service" means providing access and transport to the Internet, computer processing, information storage, or protocol conversion at a rate of at least one megabit per second in either the upstream or downstream direction. Broadband service does not include information content or service applications provided over the access service or any intrastate service that was subject to a tariff as of January 1, 2012.
7. "Governmental Entity" means a county, special taxing district organized pursuant to title 48, city or town in Arizona that is 1) outside any municipal boundary having a population of 10,000 or more persons, or 2) outside federal metropolitan and micropolitan statistical areas.
8. "Right-of-Way" ("ROW") means any area on, below or above a public highway, road, street, alley, building, public easement or other corridor or space dedicated for public travel or use, that is subject to the jurisdiction or control of a unit of government.
9. "Rural Area" means an area, as confirmed by the latest decennial census of the Bureau of the Census, which is located: 1) outside the municipal boundary of any Arizona city having a population of 10,000 or more persons, or 2) outside federal metropolitan and micropolitan statistical areas.
10. "Service Charge" means any periodic charge imposed by the Office for any infrastructure project financed by the Office.
11. "Unserved Area" means an area that meets all of the following: 1) area outside federal metropolitan and micropolitan statistical areas; 2) if in an incorporated city or town, the population of that city or town does not exceed 10,000 persons; and 3) the area is not served by any fixed broadband provider providing broadband services in excess the minimum speeds adopted in Federal Communications Commission Publication, 11-161, paragraph 146, 768 kbps downstream and 200 kbps upstream.

**40-1402. Digital Arizona Infrastructure Office**

- A. The Digital Arizona Infrastructure Office is established.
- B. The Office is a public body for the purposes of Title 38, Chapter 3, Article 3.1.
- C. The Office is regarded as performing a governmental function in carrying out the purposes of this chapter and is not required to pay taxes or assessments on any property, activities, or monies derived from the activities of the Office.

**40-1403. Board of directors; conflict of interest; classification**

- A. The Office shall be governed by a Board consisting of members as follows:
  - 1. The State of Arizona Chief Information Officer (CIO), or the state CIO's designee, who shall serve as chairperson of the Board.
  - 2. A senior member of the Arizona Commerce Authority or designee.
  - 6. Five members appointed by the governor pursuant to Section 38-211 to staggered five-year terms of office. At least one appointed member must be an enrolled member of an Indian tribe in this state. An appointed member may not serve more than two consecutive terms, except that service for a partial term of less than three years does not count toward the two-term limitation.
- B. Members of the Board are not eligible to receive compensation for their services but are eligible for reimbursement of expenses pursuant to Title 38, Chapter 4, Article 2.
- C. Members of the Board are public officers for the purposes of Title 38, Chapter 3, Article 8.
- D. Members of the Board, employees of the Office and persons retained or under contract by the Office shall not participate in any direct discussions or actions related to any project financed under this chapter in which the person has any direct or indirect personal financial interest. For the purposes of this subsection, a member of the board who is an employee or official of a participant in or applicant shall not be considered to have a direct or indirect personal financial interest in a project by virtue of the member's service alone. A violation of this subsection is a class 1 misdemeanor.

**40-1404. Administrative support**

- A. The Arizona strategic enterprise technology (ASET) office of the Arizona department of administration (ADOA) shall provide:
  - 1. General administrative support, equipment and office and meeting space to the Office.
  - 2. Staff support for administrative and technical requirements of the Office.
- B. The office shall reimburse the ADOA for all direct costs incurred in supporting the Office.

**40-1405. Advisory panel**

The Board shall organize a Digital Arizona Council shall serve as an advisory council to the Office. The Digital Arizona Council shall be representative of broadband interests in the provider, government and user communities. In addition, the chairperson of the Board may appoint others to act in an advisory role to assist the Board as the chairperson considers necessary.

**40-1406. Organizational and administrative powers and duties**

- A. The Office shall have an official seal that is judicially noticed.
- B. As necessary to carry out its responsibilities under this chapter, the Office, through its Board, may:
  - 1. Sue and be sued.

2. Contract.
3. Employ, retain or contract for professional assistance.
4. Adopt and approve all policies and procedures of the Office.

**40-1407. Functional and operational powers and duties**

A. The Office, through its Board, may:

1. Apply for, accept, and administer grants and other financial assistance from the United States government and from all other public and private sources to carry out its responsibilities under this chapter.
2. Establish guidelines and best practices under applicable law for broadband infrastructure, permits, ROW and easements relating to Governmental Entities, and private rights-of-way holders.
3. Establish guidelines and best practices under applicable law for fairly sharing and pricing broadband infrastructure enabled by the use of public rights-of-way relating to Governmental Entities, and private rights-of-way holders.
4. Adjudicate disputes relating to broadband infrastructure, permits, ROW or easements among voluntarily participating Providers, Governmental Entities, private rights-of-way holders.

B. The Board shall:

1. Develop, prioritize, and adopt selection criteria for broadband infrastructure projects pursuant to this chapter and with consideration for recommendations submitted by governmental and educational entities, telecommunications businesses, information services, medical services and statewide trade and business organizations.
2. Impose administrative fees that are necessary to recover the costs incurred in connection with providing its duties. All monies collected as administrative fees shall be credited to the Office.
3. Adopt administrative rules pursuant to Title 41, Chapter 6 to carry out the requirements of this chapter.

**40-1408. State rights-of-way and easements**

A. The Office, through its Board, shall adopt rules for the use of state owned rights-of-way for broadband infrastructure requirements. All such rules shall be consistent with applicable law including court decisions governing rights-of-way under the stewardship of the department of transportation.

B. Excepting the State Land Trust land any agency of this state shall allow the use of any rights-of-way and easements it controls at cost, including administrative cost recovery, for installation of broadband infrastructure for serving Unserved and underserved areas of this state as determined by the Office.

C. The State Land Commissioner shall allow for use of state agency rights-of-way and easements over state trust land consistent with its governing statutes and court decisions.

**Article 2. Technical assistance**

**40-1431. ROW; application; priority; approval or disapproval**

A. The Office shall:

1. Establish forms for broadband providers to make application to the Office for access to broadband infrastructure, permits, ROW and easements under the jurisdiction of the Office.
2. Establish a procedure for receiving, reviewing, evaluating and approving or disapproving on its merits each administratively complete and correct application for access to broadband infrastructure, permits, ROW and easements under the jurisdiction of the Office.

3. Adopt rule criteria by which access to broadband infrastructure, permits, ROW and easements will be determined. The rule criteria must include an assessment of the technical and financial applications on a fair and equitable basis.

4. Adopt rules for establishing priority of applications for access to broadband infrastructure, permits, ROW and easements as provided by Section 40-1407, Subsection B, Paragraph 1.

B. The Board shall:

1. Approve or disapprove applications for broadband infrastructure, permits, ROW and easements and notify the applicant of the action within a reasonable period after the date of the application.

2. Determine order and priority of the applications under this chapter based on merits of the applications.

C. If an application is approved the Board may condition the approval on assurances it considers necessary for ensuring that the broadband infrastructure, permits, ROW or easements will be used according to applicable law and terms of the application.

D. The Office may assess fees sufficient to cover the Office's costs related to the application.

### **Article 3. Financial provisions**

#### **40-1451. Annual budget**

A. On or before June 30 of each year the Board shall hold a public hearing to adopt a budget for the following fiscal year.

#### **40-xxxx. Alternative dispute resolution means and rules**

A. The Office shall establish alternative dispute resolution means and rules for mediating, arbitrating for resolving disputes under its scope of activities.